
MARTIN R. STUDER

ATTORNEY AT LAW

638 FERGUSON AVE., SUITE 1
BOZEMAN, MONTANA 59718
(406) 587-5022
FAX: (406) 587-5129

February 16, 2011

Rep. Ken Peterson
Montana House of Representatives
P.O. Box 200400
Helena, MT 59620-0400

VIA FAX (406) 444-4825

RE: HB 50

Dear Mr. Peterson:

House Bill 50 is scheduled for hearing on Thursday, February 17. Since I cannot make it to Helena, I would like to submit written testimony in support of that bill.

I have been practicing law in Montana for 25 years. I represent people who have been injured through the carelessness of others, and many of them have been injured in wrecks caused by drunk drivers.

When drunk drivers cause serious bodily injuries or fatalities, they are usually charged with negligent vehicular assault or vehicular homicide. They retain counsel or the Court appoints a public defender to represent them, and they cannot be compelled to testify about where they got drunk, who furnished the alcohol or how much they consumed until the criminal charges against them have been resolved, which invariably takes more than 180 days and can take more than two years. Since law enforcement agencies cannot be compelled to produce the fruits of their investigation either, the victims of drunk drivers may not be able to identify persons or entities who share liability for their injuries and damages until after the time limits set forth in § 27-1-710(6), MCA, have expired.

Let me give you an example. I presently represent a young Bozeman woman who was on her way to work in the early morning hours of January 1, 2010, when she was rear-ended by a drunk driver. The force of the impact totaled her car, and she suffered serious injuries. The drunk was charged with negligent vehicular assault, but the case has still not gone to trial. In the meantime, I cannot compel him to disclose where he spent New Years Eve, or who furnished the alcohol he consumed. Nor will the prosecuting attorney disclose anything. As a result, more than a year after the wreck I have no way of identifying persons or entities who

Ken Peterson
February 16, 2011
Page 2

share liability, and, since the drunk has no assets and his insurance company has denied coverage, the 180 day notice provision set forth in § 27-1-710(6), MCA, will effectively deprive my client of compensation for her injuries and damages.

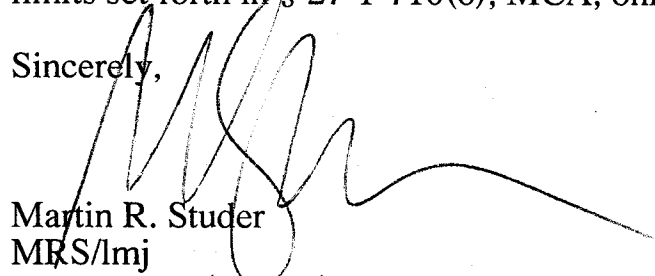
While my client has recovered from her injuries, she is still trying to pay off her medical bills and the loans on the car that was totaled and the car she purchased to replace it, while those who furnished alcohol to the drunk who rear-ended her can rest assured that they will never be held accountable.

This is just one example. There are many more, and although some of the drunks who have injured my clients did their drinking at home, most got drunk at taverns or parties.

The 180 day notice provision set forth in § 27-1-710(6), MCA, is not only arbitrary and unreasonable, but was enacted into law without careful thought. As introduced in 2003, Senate Bill 337 did not contain any notice provision. After the hearing, the Senate Business and Labor Committee amended it to include the notice provision in executive session. *See Compiled Legislative History of SB 337 (2003)*. Thereafter, neither the Senate nor the House gave any consideration to the impact that amendment would have on the civil remedies available to those who are injured through the carelessness of taverns and social hosts who furnish alcohol to minors and drunks. *See Transcript of February 14, 2003, Senate Business and Labor Committee Hearing on SB 337; and Transcript of March 27, 2003, House Business and Labor Committee Hearing on SB 337*. Instead, the Legislature appears to have been duped by tavern owners and their lobbyists, who misrepresented and exaggerated the threat of litigation in order to evade liability for furnishing alcohol to minors and drunks.

If we are serious about public safety, we should do more than simply penalize drunk drivers. We need to hold those who furnish alcohol to minors and drunks accountable too. Our civil justice system provides the means to do that. The time limits set forth in § 27-1-710(6), MCA, only undermine that system.

Sincerely,



Martin R. Studer
MRS/lmj
C: A. Smith (MTLA)